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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LISA MARIE V.,
Plaintiff,
v.
ANDREW M. SAUL, Commissioner
of Social Security,¹
Defendant.

Case No. 8:18-cv-01809-KES

MEMORANDUM OPINION AND
ORDER

I.

BACKGROUND

Plaintiff Lisa Marie V. (“Plaintiff”) applied for Supplemental Security Income (“SSI”) benefits in June 2014, alleging disability commencing November 7, 2013. Administrative Record (“AR”) 197-205. On March 8, 2017, and September 26, 2017, an Administrative Law Judge (“ALJ”) conducted hearings; at the first hearing, Plaintiff, who was represented by an attorney, appeared and testified, as did a vocational expert (“VE”). AR 32-70. On October 27, 2017, the

¹ Andrew Saul is now the Commissioner of Social Security and is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d).

1 ALJ issued an unfavorable decision. AR 15-31. The ALJ found that Plaintiff
2 suffered from the severe, medically determinable impairments of “bipolar disorder,
3 not otherwise specified, with psychotic features; and polysubstance dependence, in
4 remission; bilateral lower extremity edema; GERD [gastroesophageal reflux
5 disease]; and musculoligamentous strain/sprain of cervical spine.” AR 17. Despite
6 these impairments, the ALJ found that Plaintiff had a residual functional capacity
7 (“RFC”) to perform medium work with the following mental restrictions: “limited
8 to simple repetitive tasks; occasional interaction with supervisors; minimal
9 interaction with coworkers and the public; ordinary stresses and changes; no high
10 production quotas such as rapid assembly or other such high production jobs; and
11 would miss work once every 30-45 days.” AR 19.

12 Based on this RFC and the VE’s testimony, the ALJ found that Plaintiff
13 could work as an automatic machine attendant (Dictionary of Occupational Titles
14 [“DOT”] 649.685-010), bench assembler (DOT 706.684-022), and laundry worker
15 (DOT 361.685-018). AR 26. The ALJ concluded that Plaintiff was not disabled.
16 AR 26-27.

17 II.

18 ISSUES PRESENTED

19 Issue One: Whether the ALJ properly considered the opinion of treating
20 psychiatrist, Dr. Caitlin Pickart.

21 Issue Two: Whether the ALJ properly considered Plaintiff’s subjective
22 symptom testimony.

23 Issue Three: Whether the ALJ properly considered Plaintiff’s Global
24 Assessment of Functioning (“GAF”) scores.

25 Issue Four: Whether the ALJ properly considered Plaintiff’s edema.
26 (Dkt. 22, Joint Stipulation [“JS”] at 2.)

27 In addition to these four issues, the Court invited the parties to submit
28 supplemental briefing addressing (1) whether the VE’s testimony that a person

1 with Plaintiff's RFC could work as an automatic machine attendant or bench
2 assembler is inconsistent with the DOT due to the RFC's restriction against "rapid
3 assembly" work, per Randazzo v. Berryhill, 725 F. App'x 446 (9th Cir. 2017), and
4 (2) if any error in the ALJ's relying on the VE's testimony was harmless, because
5 the availability of 70,000 laundry worker jobs nationally is sufficient. (Dkt. 24.)
6 In response, Plaintiff did not contest that 70,000 jobs constitutes a "significant
7 number" of jobs in the national economy. Instead, she argued that the laundry
8 worker job is also inconsistent with the RFC's restriction against "rapid assembly
9 or other such high production jobs." (Dkt. 25 at 4.) The Court therefore considers
10 as a fifth issue:

11 Issue Five: Whether the ALJ erred in relying on the VE's testimony that a
12 hypothetical person with Plaintiff's RFC could be a laundry worker.

13 **III.**

14 **DISCUSSION**

15 **A. ISSUE ONE: Dr. Pickart.**

16 Plaintiff contends that the ALJ erred by rejecting Dr. Pickart's opinions
17 without addressing all the factors set forth in 20 C.F.R. § 404.1527(c) in his written
18 decision. (JS at 3-4.) Plaintiff also contends that the ALJ failed to give legally
19 sufficient reasons for rejecting Dr. Pickart's opinions. (JS at 5.) Finally, Plaintiff
20 contends that the ALJ lacked substantial evidence to reject Dr. Pickart's opinions
21 without developing the record by obtaining testimony from a medical expert
22 ("ME"). (JS at 10.)

23 **1. Rules Governing the Evaluation of Medical Evidence.²**

24 "As a general rule, more weight should be given to the opinion of a treating
25

26 ² On January 18, 2017, the SSA published the final rules "Revisions to Rules
27 Regarding the Evaluation of Medical Evidence" in the Federal Register (82 FR
28 5844). These revised rules (which no longer give controlling weight to the
uncontradicted opinions of treating physicians) apply to claims filed on or after

1 source than to the opinion of doctors who do not treat the claimant.” Turner v.
2 Comm’r of SSA, 613 F.3d 1217, 1222 (9th Cir. 2010) (citation omitted). This rule,
3 however, is not absolute. “Where . . . a nontreating source’s opinion contradicts
4 that of the treating physician but is not based on independent clinical findings, or
5 rests on clinical findings also considered by the treating physician, the opinion of
6 the treating physician may be rejected only if the ALJ gives specific, legitimate
7 reasons for doing so that are based on substantial evidence in the record.”
8 Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citation omitted). Here,
9 Plaintiff concedes that the opinion of Dr. Pickart was contradicted—e.g., by the
10 opinion of a consultative examiner. (See JS at 2); see also AR 24 (ALJ discussing
11 consultative psychiatric examiner’s findings, including that Plaintiff was not
12 significantly limited in ability to interact with coworkers or accept instructions
13 from supervisors). Thus, the dispositive question is whether the ALJ gave
14 “specific, legitimate reasons” for discounting Dr. Pickart’s opinions.

15 **2. Summary of Dr. Pickart’s Opinions.**

16 Dr. Pickart completed a “mental assessment” form describing Plaintiff’s
17 mental abilities and limitations. AR 662-66. Dr. Pickart opined that Plaintiff has
18 many “moderately severe” and “severe” limitations, terms defined by the form as
19 indicating “serious” and “extreme” functional impairments, respectively. Id. Most
20 relevant here, Dr. Pickart found that Plaintiff was extremely impaired in her ability
21 to work with others, interact appropriately with the public, accept instructions from
22 supervisors, respond appropriately to changes, and work independently. Id.; see
23 also AR 66 (Plaintiff’s counsel’s characterization of Dr. Pickart’s opinions). The
24 VE testified that if credited, Dr. Pickart’s assessment would preclude all work. AR
25 65-66.

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March 27, 2017, so they do not apply to Plaintiff’s claim.

1 **3. Analysis of Claimed Errors.**

2 a. Failure to Recite 20 C.F.R. § 404.1527 Factors.

3 ALJs must weigh the medical evidence by considering factors such as
4 (1) the nature of the relationship between the doctor and the patient (e.g.,
5 examining, treating, or other), (2) the length and nature of any treating relationship,
6 (3) the degree to which the doctor “presents relevant evidence to support a medical
7 opinion,” (4) whether the opinion is consistent with “the record as a whole,” (5) the
8 doctor’s specialization, and (6) “other factors,” such as the doctor’s familiarity
9 with disability benefits programs. 20 C.F.R. § 404.1527(c).

10 Plaintiff cites Trevizo v. Berryhill, 871 F. 3d 664 (9th Cir. 2017), for the
11 premise that ALJs must discuss in their written decisions each factor for each
12 medical opinion. (JS at 3.) Plaintiff relies on the following language from
13 Trevizo:

14 [T]he ALJ erred by failing to apply the appropriate factors in
15 determining the extent to which the opinion should be credited.

16 Though she suggested that Dr. Galhotra’s opinion was “inconsistent
17 with the other substantial evidence in [Trevizo’s] case record,” such
18 that it should not be given dispositive weight, 20 C.F.R.

19 § 404.1527(c)(2), the ALJ did not consider factors such as the length
20 of the treating relationship, the frequency of examination, the nature
21 and extent of the treatment relationship, or the supportability of the
22 opinion, id. § 404.1527(c)(2)-(6). *This failure alone constitutes*
23 *reversible legal error.*

24 Id. (emphasis added).

25 Other courts considering this same argument have declined to interpret
26 Travizo as establishing a new requirement for ALJ decisions. One district court
27 persuasively reasoned as follows:

28 Prior to Trevizo, the Ninth Circuit had never given any

1 indication that an ALJ was required to explicitly set forth in rote
2 fashion an analysis of each of the 404.1527(c) factors. See Hoffman
3 v. Berryhill, No.: 16-cv-1976-JM-AGS, 2017 U.S. Dist. LEXIS
4 136353, *6, 2017 WL 3641881 (S.D. Cal Aug. 24, 2017) (adopted on
5 9/14/2017 at Hoffman v. Berryhill, No.: 16-cv-1976-JM-AGS, ECF
6 No. 26). (“In explaining his rejection of Dr. Kane’s opinion, the ALJ
7 did not explicitly analyze each of these § 404.1527(c) factors. The
8 Ninth Circuit has never expressly held that an ALJ should.”). ...

9 The court concludes that it should not read into Trevizo a
10 requirement that ALJs explicitly recite an analysis of each
11 § 404.1527(c) factor in each of their decisions. Rather, Trevizo
12 requires that the record reflect that the ALJ actually considered and
13 applied the appropriate factors. A broader reading would be a
14 significant departure from prior Ninth Circuit precedent and the
15 Trevizo court gave no indication that it intended such a break.
16 Indeed, the Social Security regulations themselves do not express
17 such a requirement and instead direct that the factors are to be
18 *considered*. See 20 C.F.R. § 404.1527(c) (“Unless we give a treating
19 source’s medical opinion controlling weight under paragraph (c)(2)
20 of this section, we consider all of the following factors in deciding the
21 weight we give to any medical opinion.”).

22 Standen v. Berryhill, No. 2:16-cv-1267-EFB, 2017 U.S. Dist. LEXIS 156775, at
23 *18-19 (E.D. Cal. Sep. 25, 2017). The Standen court concluded that the record
24 reflected “the appropriate factors were properly considered, even if all are not
25 repeated in rote fashion.” Id. at *19-20. While the Ninth Circuit recently vacated
26 and remanded Standen on other grounds, the appellate court specifically agreed
27 with Standen that the ALJ gave specific and legitimate reasons for rejecting the
28 treating physician’s opinion, in part because “ALJ’s decision reflect[ed]

1 consideration of the Trevizo factors.” Standen v. Saul, No. 17-17386, 2019 WL
2 3408893, at *1 (9th Cir. July 29, 2019).

3 Here, the record reflects that the ALJ knew about Dr. Pickart’s specialization
4 and treating relationship. In identifying records inconsistent with Dr. Pickart’s
5 mental assessment, the ALJ cited Exhibit 16F, page 13 (AR 25), a treating record
6 signed by “Caitlin Pickart, M.D., Psychiatrist.” AR 786. Plaintiff’s counsel
7 discussed Dr. Pickart’s treating relationship with the ALJ at the hearing. AR 59-
8 61. The ALJ’s failure to discuss in his written opinion every § 404.1527 factor’s
9 applicability to Dr. Pickart’s assessment is not legal error.

10 b. Failure to Develop the Record.

11 When the ALJ finished questioning Plaintiff, the ALJ stated, “[H]ere’s what
12 I think[.] I need help with this. It looks like I need an expert witness and then you
13 can cross-examine an expert witness.” AR 58. Plaintiff’s counsel argued that
14 Plaintiff had low GAF scores and a work-preclusive opinion from her treating
15 psychiatrist, suggesting that the record was already adequately developed to
16 support a finding of disability. AR 58-62. The ALJ listened to this argument and
17 responded, “okay.” AR 62.

18 The ALJ has a duty to develop the record when it “is inadequate to allow for
19 proper evaluation of the evidence.” Tonapetyan v. Halter, 242 F.3d 1144, 1150
20 (9th Cir. 2001). Plaintiff argues that in the above-quoted portion of the hearing
21 transcript, the ALJ admitted that the record was inadequate without opinions from
22 a ME. (JS at 10.)

23 The ALJ’s comments during the hearing were not a final determination that
24 the record was inadequate; the ALJ was entitled to conclude otherwise while
25 finalizing his written decision. Plaintiff does not present any arguments other than
26 the ALJ’s tentative statement at the hearing as to why the record was inadequate.
27 Plaintiff cites no cases finding the record inadequate based solely on similar
28 statements by an ALJ during a hearing. Plaintiff has failed to demonstrate legal

1 error.

2 c. Failure to Give Specific, Legitimate Reasons Supported by
3 Substantial Evidence.

4 The ALJ gave Dr. Pickart's mental assessment form "little weight" for two
5 reasons, finding it (1) inconsistent with the record as a whole and (2) expressed in
6 "quite conclusory" terms. AR 25. These are legally sufficient reasons, if
7 supported by substantial evidence. See Ghanim v. Colvin, 763 F.3d 1154, 1161
8 (9th Cir. 2014) (holding conflict with claimant's activities is a proper reason to
9 reject a medical opinion); Batson v. Comm'r of SSA, 359 F.3d 1190, 1195 (9th
10 Cir. 2004) ("[A]n ALJ may discredit treating physicians' opinions that are
11 conclusory, brief, and unsupported by the record as a whole.").

12 i. Inconsistent with Other Evidence.

13 The ALJ found that Dr. Pickart's work-preclusive opinions were
14 inconsistent with (1) findings from "generally unremarkable mental status
15 examinations ... as discussed above," and (2) Plaintiff's reports that she was
16 "getting along well with others, enjoying school, and walking for exercise most
17 days." AR 25, citing AR 784.

18 The ALJ had "discussed above" mental status exams ("MSEs") conducted in
19 December 2013 (AR 558), April 2014 (AR 483-84), July 2014 (AR 622), August
20 2014 (AR 625), January 2015 (AR 643 and 647), April 2015 (AR 655), February
21 2016 (AR 519-21), and January 2017 (AR 765). AR 20-25. Those MSEs recorded
22 Plaintiff's mental status as follows:

23 • December 2013: Plaintiff reported sometimes feeling the presence of a
24 demon who talked to her, but "less and less over the past week." She was "linear
25 and organized, more focused on back pain than anything else." She appeared "SL
26 [slightly] anxious," but her anxiety was "decreased from last visit." Her speech
27 was a rapid, affect congruent, thought process tangential, and insight and judgment
28 limited. AR 558.

1 • April 2014: This was Plaintiff's next MSE after spending two months in
2 jail after a lapse of sobriety. She was experiencing increased anxiety and
3 irritability and received counseling on the effects of amphetamines. Her speech
4 was rapid, mood anxious, affect congruent, thought process disorganized "but able
5 to bring thoughts together with prompting," and insight and judgment limited. AR
6 483-84.

7 • July 2014: Plaintiff "continu[ed] to have mood swings and [was] quick to
8 be angry." She reported depression and anxiety. She was "trying to repair her
9 relationship with the rest of her family." Her speech was rapid, behavior slightly
10 anxious, mood "up and down," thought process slightly disorganized, and insight
11 and judgment limited. AR 621-22.

12 • August 2014: Plaintiff reported her moods as improved and "more stable."
13 She was still experiencing "some" depression and anxiety, but "much less." She
14 had graduated from Hope House, a 90-day rehabilitation center for people released
15 from jail, and moved to Osha Kosh, a sober living house. Her speech was rapid,
16 behavior slightly anxious, mood "much less depression and anxiety," thought
17 process slightly disorganized, and insight and judgment limited. AR 624-25.

18 • January 5, 2015: Plaintiff reported seeing shadows and figures out of the
19 corner of her eyes but not seeing spirits. Her mood was "pretty mellow except for
20 the irritability." Her MSE was otherwise unchanged. AR 642-43.

21 • January 26, 2015: Plaintiff reported a positive response to Abilify, noticing
22 that her "thoughts have become much more clear and are no longer racing." She
23 "felt calmer without irritability or agitation." Her mood had improved, and she felt
24 "hopeful" due to the new medication. Her behavior was "calm, cooperative, good
25 eye contact, pleasant." She had normal speech, organized thought process, and
26 limited insight and judgment. AR 647-48.

27 • April 2015: Plaintiff reported "doing fairly well in the past month." Her
28 mood was "fine." Her MSE was otherwise unchanged from January 26, 2015. AR

1 655-56.

2 • February 2016: Plaintiff was cooperative, coherent, and organized. She
3 made good eye contact with the interviewer. She had “appropriate” affect but
4 displayed a “depressed and anxious” mood. She could perform basic cognitive
5 tests. AR 519-21.

6 • January 2017: Plaintiff reported increased auditory and visual
7 hallucinations when feeling stressed, but she completed her school finals. She
8 reported a good mood and decreased anxiety. Her speech was clear and coherent,
9 attitude friendly and cooperative, mood mildly anxious, affect constricted, thought
10 process linear, logical, and organized, and judgment and insight intact. AR 764-
11 65.

12 Regarding Plaintiff’s school experience, in May 2016, Plaintiff reported that
13 she was “doing well” but anxious about her housing. AR 784. Increased anxiety
14 made her more irritable, but she endorsed stable moods, good use of coping skills,
15 and good energy and motivation. Id. She was still hearing voices once or twice a
16 week, but they were “easy to ignore.” Id. She reported, “Getting along well with
17 others; enjoying school; walking for exercise most days.” Id.; see also AR 761 (in
18 February 2016, reporting that she “is getting used to her school schedule;” she was
19 encouraged to “go to the DMV and obtain a book that she can study before taking
20 the test to get her license”); AR 744 (in March 2016, reporting “getting along well
21 with others; enjoying school”), AR 780 (in April 2016, reporting “mild anx[iety]
22 relating to taking tests at school or dealing with probation” but “reports good use
23 of coping skills”); AR 799 (in September 2016, “excited for new semester of
24 school because likes classes”); AR 807 (in October 2016, “[g]etting along well
25 with others; enjoying social activities; enjoying current classes ... walking daily
26 for exercise and trying to eat healthy foods”); AR 812 (same in November 2016);
27 AR 815 (same in December 2016); AR 768 (in December 2016, reporting,
28 “Currently taking college classes at Santa Ana College. She has 2 semester[s] left

1 and she will graduate with her Associates in Liberal Arts and have certificate in
2 Digital Recording.”); AR 764 (in December 2016, reporting that she “completed
3 her finals in school”).

4 Substantial evidence supports the ALJ’s finding that Dr. Pickart’s extreme
5 opinions are inconsistent with this evidence concerning Plaintiff’s schooling and
6 MSEs. None of Plaintiff’s MSEs show that she has the degree of impaired social
7 functioning as opined by Dr. Pickart. (AR 664.) Dr. Pickart opined that Plaintiff
8 had serious or extreme limitations in many cognitive areas (AR 662-63), yet
9 Plaintiff was able to pursue college coursework and take final exams. Dr. Pickart
10 opined that Plaintiff had extreme limitations in accepting instructions and
11 interacting appropriately with the public or her peers, opinions inconsistent with
12 Plaintiff’s ability to attend classes at Santa Ana College and go out in public to
13 walk daily for exercise. Indeed, Dr. Pickart seemed to recognize this inconsistency
14 by acknowledging that Plaintiff was “able to attend school” but still opining that
15 Plaintiff would be “overwhelmed” by work-related stress. AR 666. The ALJ did
16 not unreasonably interpret the evidence by concluding that if Plaintiff could
17 manage school-related stress, then she could also manage the relatively low job-
18 related stress associated with simple, unskilled work. See Dupre v. Berryhill, 765
19 F. App’x 258, 259 (9th Cir. 2019) (affirming ALJ’s rejection of treating
20 physician’s opinion as inconsistent with “largely unremarkable” MSEs).

21 ii. Lack of Support.

22 The ALJ characterized Dr. Pickart’s mental assessment as “providing very
23 little explanation of the evidence relied on in forming that opinion.” AR 25.
24 Plaintiff argues that Dr. Pickart’s treating records provide the requisite support (JS
25 at 9), but as discussed above, Dr. Pickart’s treating records contain reports of
26 Plaintiff’s daily activities that are inconsistent with Dr. Pickart’s mental
27 assessment. Dr. Pickart’s mental assessment is formatted as a check-the-box form
28 with the only narrative portions describing Plaintiff’s diagnoses and summarizing

1 her conclusions. AR 662-66. ALJs are entitled to give less weight to unexplained,
2 check-the-box opinions. Wennet v. Saul, No. 17-16118, 2019 U.S. App. LEXIS
3 19239, at *4 (9th Cir. June 27, 2019) (“Dr. Ward’s treatment reports were check-
4 the-box forms that provided no reasoning, and thus are entitled to little weight.”).

5 **B. ISSUE TWO: Plaintiff’s Subjective Symptom Testimony.**

6 **1. Rules for Evaluating Subjective Symptom Testimony.**

7 It is the ALJ’s role to evaluate the claimant’s testimony regarding subjective
8 pain or symptoms. See Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012).³
9 “[T]he ALJ is not required to believe every allegation of disabling pain, or else
10 disability benefits would be available for the asking, a result plainly contrary to
11 42 U.S.C. § 423(d)(5)(A).” Id. at 1112. An ALJ’s assessment of symptom
12 severity is entitled to “great weight.” Weetman v. Sullivan, 877 F.2d 20, 22 (9th
13 Cir. 1989).

14 If an individual alleges impairment-related symptoms, the ALJ must
15 evaluate those symptoms using a two-step process. First, the ALJ must determine
16 whether the claimant has presented objective medical evidence of an underlying
17 impairment which could reasonably be expected to produce the pain or other
18 symptoms alleged. Treichler v. Comm’r of SSA, 775 F.3d 1090, 1102 (9th Cir.
19 2014). If so, the ALJ may not reject a claimant’s testimony “simply because there
20 is no showing that the impairment can reasonably produce the degree of symptom
21

22 ³ On March 24, 2016, the SSA published Social Security Ruling 16-3p,
23 2016 SSR LEXIS 4 (“SSR 16-3p”), which eliminated use of the term “credibility”
24 from SSA sub-regulatory policy. SSR 16-3p was republished on October 25, 2017
25 with the revision that the ruling was “applicable on March 28, 2016.” See 82 Fed.
26 Reg. 49462, 49468 & n.27 (Oct. 25, 2017). Here, the ALJ issued his opinion in
27 October 2017, such that SSR 16-3p was in effect. The Ninth Circuit has noted that
28 SSR 16-3p is consistent with its prior precedent. Trevizo v. Berryhill, 871 F.3d
664, 678 n.5 (9th Cir. 2017) (SSR 16-3p “makes clear what [Ninth Circuit]
precedent already required”). Accordingly, citation to earlier case law is
appropriate.

1 alleged.” Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996).

2 Second, if the claimant meets the first test, the ALJ may discredit the
3 claimant’s subjective symptom testimony only upon making specific findings that
4 support the conclusion. Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). If
5 the ALJ finds testimony as to the severity of a claimant’s pain and impairments is
6 unreliable, then the ALJ must make findings “sufficiently specific to permit the
7 court to conclude that the ALJ did not arbitrarily discredit claimant’s testimony.”
8 Thomas v. Barnhart, 278 F.3d 947, 958 (9th Cir. 2002); Brown-Hunter v. Colvin,
9 806 F.3d 487, 493 (9th Cir. 2015). Absent a finding or affirmative evidence of
10 malingering, the ALJ must provide “clear and convincing” reasons for rejecting the
11 claimant’s testimony. Ghanim v. Colvin, 763 F.3d 1154, 1163 & n.9 (9th Cir.
12 2014).

13 In assessing the intensity and persistence of symptoms, the ALJ must
14 consider a claimant’s work record, observations of medical providers and third
15 parties with knowledge of claimant’s limitations, aggravating factors, functional
16 restrictions caused by symptoms, effects of medication, and the claimant’s daily
17 activities. Smolen, 80 F.3d at 1283-84 & n.8; SSR 16-3p, 2016 SSR LEXIS 4, at
18 *10 (“[The Commissioner] examine[s] the entire case record, including the
19 objective medical evidence; an individual’s statements ...; statements and other
20 information provided by medical sources and other persons; and any other relevant
21 evidence in the individual’s case record.”). ALJs may also consider inconsistency
22 in the claimant’s statements. Ghanim, 763 F.3d at 1163; SSR 16-3p, 2016 SSR
23 LEXIS 4, at *21 (“[The Commissioner] will compare statements an individual
24 makes in connection with the individual’s claim for disability benefits with any
25 existing statements the individual made under other circumstances.”).

26 If the ALJ’s findings are supported by substantial evidence in the record,
27 courts may not engage in second-guessing. Thomas, 278 F.3d at 959.

2. Summary of Plaintiff's Subjective Symptom Testimony.

Plaintiff testified that she is unable to work because of schizoaffective disorder, posttraumatic stress disorder, and hallucinations. AR 54. She wrote, "When I'm in public I see things that aren't there and I hear animals, insects, and trees talking and singing to me. I have extremely bad panic attacks that ... cause me to hallucinate. I get easily irritated when people get too close to me and sometimes that causes me not to be able to speak." AR 230.

3. The ALJ's Evaluation of Plaintiff's Testimony.

The ALJ found that Plaintiff's testimony "concerning the intensity, persistence and limiting effect of [her] symptoms [was] not entirely consistent with the medical evidence and other evidence in the record...." AR 24. As supporting reasons, the ALJ cited Plaintiff's (1) limited treatment history and (2) sporadic work history before her claimed date of impairment. AR 24. The ALJ also (3) contrasted Plaintiff's reported activities with her claimed dysfunction.⁴ AR 18-19.

Reason One: The ALJ characterized Plaintiff's mental health treatment history as "less comprehensive than one would expect for a totally disabled individual." AR 24. While true, one cannot reasonably infer that Plaintiff received sporadic mental health treatment because her condition was not serious. Rather, the record reflects an unstable childhood, insurance issues, relationship issues, drug abuse, and repeated arrests. AR 55-56, 484, 493, 507, 516-19, 531. These are equally likely to have caused her to receive spotty mental health treatment.

⁴ Plaintiff argues that this attributes reasoning "post hoc" to the ALJ. (JS at 34.) The Court disagrees. That the reasoning appeared in a different part of the opinion does not mean that the ALJ did not discount Plaintiff's testimony due to the identified inconsistencies. See, e.g., AR 18 ("The claimant alleged she has difficulty concentrating. However, the claimant has enough concentration to perform household chores, pay bills, and use public transportation.").

1 Plaintiff's poor mental health may also have caused gaps in her treatment.
2 Plaintiff reported that she has been "on and off" psychotropic medication since the
3 age of 33. AR 492. She would "stay on medication when she was in jail" or
4 rehab, but "once let out she did not follow up." Id. Plaintiff recognized, "I do well
5 for a while and then I stop medication and I end up back on the street." Id.

6 Reason Two: ALJs may consider a claimant's work history when assessing
7 his/her testimony. See Sherman v. Colvin, 582 F. App'x 745, 748 (9th Cir. 2014).
8 Plaintiff testified that she has never held long-term employment. AR 54. About
9 15 years earlier, she worked for a few months as a telemarketer. AR 53-54.
10 Again, however, the socioeconomic facts discussed above, rather than a lack of
11 motivation to work, appear equally likely to have caused this.

12 Reason Three: The ALJ noted that Plaintiff "was living in a sober living
13 facility with other women. She goes to group classes. She is able to go out alone."
14 AR 18. Plaintiff could interact with medical staff cooperatively and reported
15 getting along well with others and enjoying school. Id. She could ride the bus and
16 do her own shopping. AR 19.

17 These notations are supported by the record. See, e.g., AR 518 (Plaintiff
18 lived in sober living house with other women⁵); AR 519 (Plaintiff took the bus to
19 WIT [Whatever It Takes] Telecare Center to attend therapy and group classes and
20 went other places alone; she did her own shopping); AR 784 (she reported getting
21 along with others and enjoying college classes); AR 768 (she was on track to
22 graduate with an associate's certificate from Santa Ana College).

23 The ALJ did not unreasonably interpret the evidence by finding that
24 Plaintiff's ability to go out alone in public, attend group therapy classes, live in a
25 group setting, interact cooperatively with medical staff, and successfully take
26 college classes was inconsistent with her testimony that going out in public triggers

27 ⁵ In July 2016, Plaintiff moved into her own studio apartment. AR 69, 795.
28

1 panic attacks and an inability to speak. Inconsistency with Plaintiff's reported
2 activities thus provides a clear and convincing reason supported by substantial
3 evidence for discounting Plaintiff's subjective symptom testimony.

4 **C. ISSUE THREE: Plaintiff's GAF Scores.**

5 Plaintiff contends that the ALJ "improperly failed to consider" Plaintiff's
6 GAF scores. (JS at 36.) Plaintiff acknowledges the existence of cases "that
7 indicate the failure to consider a GAF is not reversible error," but distinguishes
8 Plaintiff's case as one in which "the GAF scores were pointed out to the ALJ, and
9 the ALJ should have considered this evidence because the ALJ was put on notice
10 to consider it." (JS at 37.) Plaintiff concludes that the ALJ was required to
11 indicate in his written decision the amount of weight he gave to Plaintiff's GAF
12 scores. (Id.)

13 In support of this argument, Plaintiff cites Gattis v. Colvin, No. CV. 15-
14 03271, 2016 U.S. Dist. Lexis 9742, *12-15 (C.D. Cal. Jan. 27, 2016). In Gattis,
15 the ALJ's mental RFC assessment rested on the opinion of state agency medical
16 consultant Dr. Patterson. Dr. Patterson failed to discuss the GAF scores in the
17 medical records she reviewed, even though the VE testified that a GAF score as
18 low as the claimant's would preclude all work. The district court held that "Dr.
19 Patterson's RFC assessment is not supported by independent evidence and cannot
20 serve as substantial evidence." Id.

21 Gattis did not hold that ALJs must discuss GAF scores in their written
22 decisions. Failing to discuss GAF scores is generally not reversible error. Hughes
23 v. Colvin, 599 F. App'x 765, 766 (9th Cir. 2015) ("The ALJ did not err in failing
24 to address Dr. Caverly's GAF score, because a GAF score is merely a rough
25 estimate of an individual's psychological, social, or occupational functioning used
26 to reflect an individual's need for treatment, but it does not have any direct
27 correlative work-related or functional limitations"), citing Vargas v. Lambert, 159
28 F.3d 1161, 1164 n. 2 (9th Cir. 1998); see also Bayliss v. Barnhart, 427 F.3d 1211,

1 1217 (9th Cir. 2005) (affirming ALJ finding of non-disability where record
2 contained GAF scores of 40).

3 Plaintiff's argument that this is a unique case because her low GAF scores
4 were "pointed out" to the ALJ also fails. The Court could meaningfully review the
5 administrative decision-making process without the ALJ's having assigned a
6 specific weight to Plaintiff's GAF scores. As discussed above, the ALJ found that
7 Plaintiff's reported activities (e.g., taking college classes, going out alone, taking
8 the bus, shopping, and walking in public for exercise) were inconsistent with the
9 extreme limitations in Dr. Pickart's mental assessment form and Plaintiff's
10 subjective symptom testimony. The ALJ also apparently viewed Plaintiff's low
11 GAF scores as inconsistent with her reported activities.

12 **D. ISSUE FOUR: Plaintiff's Edema.**

13 Plaintiff argues that the ALJ erred by not explaining "how edema
14 significantly limited [Plaintiff's] work abilities." (JS at 41.) Plaintiff suggests that
15 the ALJ should have incorporated into Plaintiff's RFC the need to elevate her legs
16 for two hours every day to reduce edema. (JS at 38, citing hearing testimony at
17 AR 67-69 [Plaintiff typically elevates her legs for two hours/day but does not take
18 medication to address edema]). Plaintiff cites medical evidence from 2014 mostly
19 (but not universally) noting "1+" edema.⁶ (JS at 40.)

20 The Commissioner responds that the RFC is supported by substantial
21 evidence, because the medical evidence showed episodic edema with no need for
22 consistent leg elevation. The Commissioner characterizes AR 775 ["history of
23 edema"] and AR 780 ["edema has improved since stopping" Depakote] as showing
24 that Plaintiff's edema "fully resolved when she stopped taking one of her
25 medications in 2016." (JS at 40.)

26
27 ⁶ See <https://www.healthline.com/health/pitting-edema#diagnosis> describing
28 edema rating scale of 1 (least serious) to 4 (most serious).

1 **1. Summary of Relevant Administrative Proceedings.**

2 The ALJ found that Plaintiff's "bilateral lower extremity edema" was a
3 severe impairment. AR 17. The ALJ restricted Plaintiff against standing or
4 walking for more than six hours during an eight-hour workday. AR 19. The ALJ's
5 RFC did not include any allowance for Plaintiff to elevate her legs while working.
6 At the second hearing, the VE testified that if Plaintiff had to elevate her legs 24
7 inches for an hour each workday, that would not preclude work as an assembler,
8 DOT 734.687-018, because it is a sedentary job and her legs would not be above
9 the work table. AR 45-47. In contrast, if she had to elevate her legs waist high "so
10 that she'd have to recline to some extent," that would preclude doing that job. AR
11 47. The VE at the first hearing was not asked about leg elevation.

12 The assembler position, however, is not one of the jobs that the ALJ
13 ultimately found Plaintiff could do. Compare AR 47 and 26 (discussing "bench
14 assembler" position identified by a different DOT code). Even if the VE's
15 reasoning would apply equally to the "bench assembler" job, that position appears
16 inconsistent with the RFC's restriction against fast-paced assembly work, per
17 Randazzo v. Berryhill, 725 F. App'x 446, 447 (9th Cir. 2017). The VE did not
18 address whether leg elevation was compatible with the automated machine
19 attendant or laundry worker positions, both of which are "medium" work. AR 26.

20 **2. Chronological Summary of the Medical Evidence.**

21 • 1/31/14 (AR 284): Plaintiff complained of swelling in her legs and ankles
22 "for years." She thought it was due to "psych meds" but observed that her
23 symptoms continued when off of medication. Her treating source did not observe
24 pitting, and Plaintiff was able to ambulate, sit, and stand. The treating source
25 advised Plaintiff to continue elevating her legs as needed.

26 • 3/13/14 (AR 283): Plaintiff was "seen for BLE [both lower extremities]
27 edema for years. States worsens when on feet for long period of time. ...
28 Resolves when elevating [legs]." Recommended treatment was ibuprofen, extra

1 towel to elevate legs, and compression stockings.

2 • 5/15/14 (AR 502): Plaintiff complained of leg swelling but elevation
3 helped. The doctor observed “1+ pitting edema” affecting both legs and wrote,
4 “patient adamant of needing a water pill today.” The doctor prescribed
5 furosemide, a diuretic sold under the brand name Lasix, with a dosage of 20
6 mg/day.

7 • 6/14/14 (AR 501): A physical examination revealed “(+)1 pedal edema.”
8 Furosemide 20 mg was still listed as one of Plaintiff’s medications.

9 • 7/30/14 (AR 506-11): Plaintiff told the consultative examiner that she was
10 taking furosemide and had a “history of edema involving her upper and lower
11 extremities.” AR 506-07. She had been “on Zyprexa,” stopped taking it several
12 months earlier, and noticed “a gradual improvement in the edema.” AR 506. The
13 examiner saw “no edema” affecting any of her extremities. AR 509.

14 • 10/22/14 (AR 590): “Had work up for edema legs ... placed on Lasix ...
15 Lasix 60 mg was helpful.” The doctor observed, “Edema is present” and refilled
16 her Lasix prescription for 80 mg/day. AR 593. Plaintiff reported that she had been
17 on 60 mg, but it did not work, so the dosage was increased to 80 mg. AR 594.

18 • 11/17/14 (AR 584): Plaintiff reported compliance with her prescribed
19 furosemide 80 mg. AR 585. The doctor observed, “Edema is present.” AR 587.

20 • 12/2/14 (AR 579): Plaintiff reported “less swollen legs” and “no active
21 problems.” She was still prescribed furosemide 80 mg, but she indicated that she
22 was no longer taking it. AR 577. The doctor observed 1+, non-pitting edema
23 affecting both legs. AR 579. The treatment plan included counseling Plaintiff to
24 restrict her fluid intake and take furosemide, although her dosage was reduced back
25 to 20 mg/day. AR 581-82.

26 • 1/12/15 (AR 680): Plaintiff was still prescribed furosemide 20 mg, but she
27 was not taking it. AR 681-82. Plaintiff’s physical examination revealed all
28 “normal” findings and she reported pain at a level of 0/10. AR 685.

1 • 1/16/15 (AR 645): Plaintiff reported that taking Zyprexa in the past had
2 caused “BLE edema.”

3 • 4/24/15 (AR 689): Plaintiff complained of pain caused by a bunion on her
4 right foot. AR 692. She was not taking furosemide although it was still
5 prescribed. AR 691. The physical exam did not mention edema. AR 692.

6 • 10/6/15 (AR 694): Plaintiff had “no edema” and was not taking
7 furosemide. AR 695, 697. Her doctor stopped her furosemide prescription. AR
8 695.

9 • 12/15/15 (AR 702): Plaintiff had “no edema.” AR 705.

10 • 3/18/16 (AR 773): Plaintiff told Dr. Pickart that she “recently had
11 appointment with nephrologist due to edema; was told that edema could be [side
12 effect] of psych meds. [Plaintiff] reports that did not have edema until started
13 Depakote; reviewed [side effects] of med with member and agreed that as
14 possible.” Dr. Pickart discontinued her Depakote prescription.

15 • 4/15/16 (AR 780): Plaintiff reported “BLE edema has improved since
16 stopping” Depakote.

17 • 6/24/16 (AR 827): Plaintiff had “no edema.” AR 831.

18 • 9/2/16 (AR 799): Plaintiff reported that her only medication side effect
19 was increased appetite.

20 • 10/14/16 and 11/4/16 (AR 807, 812): Plaintiff again reported that her only
21 medication side effect was increased appetite.

22 • 1/24/17 (AR 837): Plaintiff had “no edema.” AR 840.

23 • 3/8/17 (AR 68-69): Plaintiff testified that she must lay down and elevate
24 her feet for two hours/day to avoid her legs becoming “very painful.”

25 **3. Analysis of Claimed Error.**

26 The ALJ’s decision not to incorporate leg elevation into Plaintiff’s RFC is
27 supported by substantial evidence. The above-summarized medical evidence
28 shows that (1) Plaintiff experienced edema in early 2014, (2) when Plaintiff

1 complained to her doctor, she received a furosemide prescription with a dosage
2 that increased over several months, (3) by mid-2014, her condition had improved,
3 such that the consultative examiner saw no edema, (4) by early 2015, Plaintiff
4 reported no edema and had stopped taking furosemide, (5) Plaintiff was largely
5 free of edema through 2015, (6) Plaintiff began experiencing edema again in early
6 2016, at which point Dr. Pickart discontinued her Depakote prescription and her
7 edema improved until she had no edema by June 2016. The ALJ reasonably
8 concluded that this evidence of medication-related, episodic edema that responded
9 well to a prescription diuretic did not justify including an accommodation for leg
10 elevation (beyond what Plaintiff could do during regular work breaks) in the RFC.

11 **E. ISSUE FIVE: The VE's Testimony.**

12 The VE testified that Plaintiff could work as a laundry worker. AR 40. The
13 DOT describes that job as follows:

14 Tends laundering machines to clean articles, such as rags, wiping
15 cloths, filter cloths, bags, sacks, and work clothes: Loads articles into
16 washer and adds specified amount of detergent, soap, or other
17 cleaning agent. Turns valve to fill washer with water. Starts machine
18 that automatically washes and rinses articles. Lifts clean, wet articles
19 from washer and places them successively into wringers and driers
20 for measured time cycles. Sorts dried articles according to
21 identification numbers or type. Folds and places item in appropriate
22 storage bin. Lubricates machines, using grease gun and oil can. May
23 dissolve soap granules in hot water and steam to make liquid soap.
24 May mend torn articles, using needle and thread. May sort and count
25 articles to verify quantities on laundry lists. May soak contaminated
26 articles in neutralizer solution in vat to precondition articles for
27 washing. May mix dyes and bleaches according to formula, and dye
28 and bleach specified articles.

1 (DOT 361.685-018.)

2 Plaintiff argues that the VE's testimony that a person with Plaintiff's RFC
3 could do this work conflicts with the DOT's description, such that the ALJ erred
4 by relying on the VE's testimony without obtaining clarification. (Dkt. 25 at 4.)
5 Plaintiff argues that "common experience" suggests this type of work must be
6 performed in a "rapid or fast-paced" environment. (Id.)

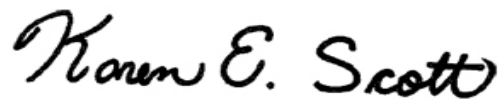
7 The Court sees no apparent conflict between the VE's testimony and the
8 DOT, such that the ALJ had no duty to inquire further. Activities such as loading
9 dirty clothes into a washing machine, adding soap, starting the machine, mending
10 torn articles, and soaking stains are generally not performed on an assembly line
11 and need not be performed rapidly to keep pace with other workers.

12 **IV.**

13 **CONCLUSION**

14 For the reasons stated above, IT IS ORDERED that judgment shall be
15 entered AFFIRMING the decision of the Commissioner.

16
17 DATED: August 16, 2019

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19 KAREN E. SCOTT
20 United States Magistrate Judge
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